

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



June 20, 2001

ALL COUNTY LETTER NO. 01-33

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: THE ADOPTIONS AND SAFE FAMILIES ACT (ASFA) FEDERAL
REGULATIONS IMPLEMENTATION

SUPERCEDES: ALL COUNTY LETTER (ACL) 94-75, QUESTIONS #1, #4, #30,
ACL 92-17, ALL COUNTY INFORMATION NOTICE (ACIN) I-91-85

The purpose of this ACL is to transmit information regarding the implementation of the federal ASFA regulations and the new federal Title IV-E Foster Care Eligibility Review Checklist. The ASFA regulations created new review procedures in both the Title IV-E Aid to Families with Dependent Children-Foster Care (AFDC-FC) Program and the Title IV-B Child Welfare Services Program. This ACL will only discuss Title IV-E Foster Care eligibility reviews. Please contact the Children's Services Branch at (916) 445-2777 if you need further information regarding the Title IV-B reviews.

Attached to this ACL is the new Title IV-E Eligibility Review Checklist (attachment to ACYF-CB-IM-00-09) which will be used by federal reviewers when they review Foster Care cases in California. There are several new ASFA requirements which counties will need to begin addressing in their AFDC-FC income maintenance cases. Many of the new ASFA requirements relate to the provision of services, community care licensing, approval of relative homes, court orders, court hearings, and court documentation. Accordingly, the Foster Care Program Development Bureau (FCPDB) recommends that county welfare departments begin (or continue) to work closely with your local county courts, probation departments, social services agencies, and licensing entities.

The following is a break down of the new ASFA provisions as they relate to AFDC-FC eligibility and some continuing requirements that will be emphasized in the new reviews. It is also important to note, that even if a requirement is not contained in the new attached federal review tool, counties are still responsible to insure compliance with the State's Eligibility and Assistance Standards (EAS) Manual. This ACL also specifies which program requirements apply only to the federal AFDC-FC Program and which apply to both the federal and State AFDC-FC Programs.

COURT ORDERS AND VOLUNTARY PLACEMENT AGREEMENTS

Although there is currently not a requirement that court orders or voluntary placement agreements be contained in the income maintenance file so long as it is available in another county file (typically the child welfare services file), the FCPDB STRONGLY recommends that copies of these documents be kept in the income maintenance file. There are several new federal ASFA requirements (in addition to existing requirements) related to court orders and voluntary placement agreements which must be verified by the eligibility worker (EW) in order for AFDC-FC eligibility to exist. If these documents are not routinely available to the EW, then verification is difficult and may be neglected. Staff from the FCPDB have been reviewing county foster care income maintenance cases in the last few months and have discovered many deficiencies in the court orders. Thus, we would recommend that counties update their policies with respect to county staff review of court orders and voluntary placement agreements. Related requirements apply equally to dependent and delinquent children.

The following court order requirements must be verified by the EW (or appropriate county staff) prior to the approval of, or continuance of, AFDC-FC benefits:

Court Order Removal Findings

1. **Contrary to the Welfare:** The EW (or appropriate county staff) must verify that the court made a finding that "continuance in the home is contrary to the welfare of the minor" or a finding to that effect. Other examples include: "there is substantial danger to the welfare of the minor without removing the minor," or "the welfare of minor requires that custody be taken from parents." For federal AFDC-FC, this court finding must be in the first court order which removes the child from his or her home (typically the detention hearing). **If this finding is not made at the first hearing which removes the child from his/her home, the child is ineligible for federal AFDC-FC funding for the duration of that stay in foster care.** *For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be in the first court order removing the child from his or her home.*
2. **Placement and Care:** The EW (or appropriate county staff) must also verify that the court made a finding that "placement and care" is vested with either the county welfare or probation department, as appropriate, or a finding to that effect. Other examples include: "temporary placement and care is vested with the county" or "care, custody, and control is vested with the county." **This finding may be in any court order, but State and federal AFDC-FC eligibility does not exist prior to the finding being made.** If "placement and care" is vested with the county probation department, a written agreement must be in effect between the county welfare and probation departments during the review period.

3. **Reasonable Efforts:** The EW (or appropriate county staff) must verify that the court made a finding that “reasonable efforts to prevent or eliminate the need for removal” have been made by the county or were not required (see below). This finding must be made by the court no later than 60 days from the date the child is removed from the home; **if this finding is not made timely, the child is ineligible for federal AFDC-FC funding for the duration of that stay in foster care.** *For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be made within 60 days from the date of removal.*

A finding that reasonable efforts to prevent or eliminate the need for removal is NOT required where the county obtains a finding from a judge that reasonable efforts were not necessary because:

- a. the parent has subjected the child to aggravated circumstances (see Welfare and Institutions Code, Section 361.5) such as, but not limited to, abandonment, torture, chronic abuse, or sexual abuse; or
- b.
 - 1) the parent has been convicted of murder or voluntary manslaughter of another child of the parent; or
 - 2) the parent has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter; or
 - 3) the parent has been convicted of a felony assault that results in serious bodily injury to the child or another child of the parent; or
- c. the parental rights of the parent have been involuntarily terminated to a sibling of the child in foster care.

Ongoing Court Order Findings (Federal AFDC-FC Only)

1. **First Permanency Hearings/Findings:** The EW (or appropriate county staff) must verify that the court made a finding in the court order that the agency has made “reasonable efforts to finalize the permanency plan” that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the “date the child entered foster care.” The date the child entered foster care is defined as the earlier of the following dates: 1) the date of the first judicial finding that the child has been subjected to child abuse or neglect or 2) sixty days from the date of removal from the home. **If this finding is not made timely, the child ceases to be eligible for federal AFDC-FC at the end of the 12th month after he or she entered care and remains ineligible until the finding is made.**

2. **Ongoing Permanency Hearings/Findings:** The EW (or appropriate county staff) must verify that the court continues to make a finding in the court order that the agency has made “reasonable efforts to finalize the permanency plan” every 12 months from the date of the original permanency planning hearing. **If this finding is not made timely, the child ceases to be eligible for federal AFDC-FC at the end of the 12th month after the last hearing and remains ineligible until the finding is made.**

Judicial Documentation

The comments to the new federal regulations specify that court orders that merely have check boxes for the requisite judicial findings will not, by themselves, be sufficient to meet the above court order requirements. Accordingly, it will be necessary for court orders to either individually state why these findings were made on a case by case basis, e.g., “the children were left abandoned by the mother and thus it was contrary to the children’s welfare to remain in the home,” or should reference the facts contained in a social worker or probation officers’ court report, a related psychiatric or psycho-social report, a sustained petition, or some other documentation submitted to the court upon which it made any of the above findings. An example of the latter option would include language such as, “The allegations in the petition/court report are sustained.” The California Department of Social Services (CDSS) is currently working with the Judicial Council of California to train judges on these new judicial documentation requirements. EWs (or appropriate county staff) should ensure that language exists in the court order which indicates which facts led to the findings prior to granting or continuing AFDC-FC benefits.

Voluntary Placement Agreements (Federal And State AFDC-FC)

The following voluntary placement agreement requirements must be verified by the EW (or appropriate county staff) prior to the approval of or continuance of AFDC-FC benefits:

1. The Voluntary Placement Agreement (SOC 155) must be signed by both the parent/legal guardian and the county representative.
2. The EW (or appropriate county staff) must verify the date on which the Voluntary Placement Agreement was signed in order to insure that payment is not made for longer than 180 days for federal AFDC-FC or six months for State AFDC-FC; payment begins either on the date the Voluntary Placement Agreement is signed or the date of placement, whichever is later. If the child is not returned home within 180 days of the child’s placement for federal AFDC-FC, then the child must either be made a dependent of the court or a finding must be made by the court that “continued voluntary placement is in the best interests of the child” in order to continue funding. If the child is not returned home within six months of the child’s placement for State AFDC-FC, then the child must be made a dependent in order to continue funding.

PHYSICAL v. LEGAL REMOVAL (FEDERAL AND STATE AFDC-FC)

In ACL 94-75, question 30, the CDSS discussed the difference between the federal Department of Health and Human Services (DHHS) and State positions regarding removal from the home. That ACL stated that, "The state has interpreted [removal from the home] to mean that only a legal removal via a court order ... constitutes removal and as such the 'home of removal' is the home of the parent or relative from whom the child is legally removed. The federal government has interpreted this to mean that the 'home of removal' is the home of the parent or relative from whom the child is physically removed, which may be different from the legal home of removal. The CDSS is presently working with the DHHS to bring closure to this issue." In the new federal regulations, the DHHS has adopted the CDSS' position that legal removal (constructive removal) is an acceptable alternative to physical removal. Accordingly, counties should continue to base their AFDC-FC eligibility determinations on the legal home of removal.

NUNC PRO TUNC (FEDERAL AFDC-FC ONLY)

Nunc Pro Tunc orders will no longer be accepted in the federal AFDC-FC Program to establish eligibility for aid. If the findings are made by the court but not recorded on the actual court order, the only acceptable documentation is a court transcript which verifies that these determinations were actually made by the court.

LICENSING

Relative Placements and Certified Pending Licensure Homes

There are ongoing negotiations between the CDSS and DHHS around the issue of licensing relatives and certified pending licensure homes. Until these negotiations are resolved, please continue to follow the instructions in ACL 00-85. Once a final position has been established, a new ACL will be released.

Documentation

Case reviewers will be checking to ensure that the child lived with an eligible provider at all times during the child's stay in foster care. For this reason, the FCPDB STRONGLY recommends that counties keep a copy of any appropriate license(s) in the income maintenance file. Also, for relative homes which have been approved by the social worker, it is imperative that the income maintenance file contain a SOC 158A (Foster Child's Data Record and AFDC-FC Certification) which documents that the home has been approved by the social worker as meeting the needs of the child.

SERVICES AND COURT HEARINGS (FEDERAL AND STATE AFDC-FC)

EAS Section 45-201.4 delineates which services and court hearings are required in order for the child to be eligible for State and federal AFDC-FC benefits. These services include: pre-placement preventative services, a written case plan which must be updated every six months (at a minimum), family reunification or permanent placement services, social worker/probation officer visits once a month (at a minimum) for children in group homes and once every six months (at a minimum) for children in other facilities, periodic reviews, and permanency planning hearings. As stated above, the DHHS will be holding the CDSS to these services requirements in its Title IV-E Foster Care Eligibility reviews and Child and Family Services reviews. Staff from the FCPDB have been reviewing county foster care income maintenance cases in the last few months and have discovered many of these services requirements are not documented in the income maintenance case. It is also important to reiterate that these requirements apply equally to dependent and delinquent children as a recent federal review of probation cases found that most counties reviewed were not providing the above services to delinquents. [Please see ACL 00-22 regarding the specific services that should be provided to delinquent children.] Therefore, it is essential for the EW (or appropriate county staff) to verify at intake and redetermination on the SOC 158A that these services and court hearings have occurred at the appropriate intervals.

TRIAL HOME VISIT (FEDERAL AND STATE AFDC-FC)

Trial home visits may not exceed six months in duration. If the visit extends beyond six months, and the child subsequently re-enters foster care, the placement must be considered a new placement episode and eligibility determined accordingly (including a new federal linkage determination). However, if there is a court order extending the trial visit beyond six months, and the trial home visit does not exceed the time frame indicated in the court order, the child retains AFDC-FC eligibility upon returning to foster care following the trial home visit without a new eligibility determination.

If you have any questions about this ACL, please contact your Foster Care Eligibility Consultant at (916) 324-5809.

Sincerely,

SYLVIA PIZZINI
Deputy Director
Children and Family Services Division

c: CWDA
CPOC

Enclosure

(June 2000)

CHILD eligible for entire sample review period: YES _____ NO _____
PROVIDER eligible for entire sample review period: YES _____ NO _____

TITLE IV-E FOSTER CARE ELIGIBILITY REVIEW CHECKLIST

EACH QUESTION MUST BE ANSWERED. If the question is not applicable, check the N/A column. A question with no space for N/A must be answered YES or NO. Review the INSTRUCTIONS FOR COMPLETING THE TITLE IV-E FOSTER CARE ELIGIBILITY CHECKLIST for an explanation of each question and how to answer it. This form may be annotated with additional information regarding eligibility, as necessary.

Sample review period: _____ - _____

1. State Abbreviation and Random Sample Selection number: _____ 2. Case ID: _____
3. County or Local Office: _____ 4. Date of Review (MM/DD/YY): _____
5. Reviewed by: _____

A. CHILD INFORMATION	YES	NO	N/A
X1. Child's Name:			
6. Child's Date of Birth (MM/DD/YY):			
7. Child's age as of first day of sample review period:			
8. If this child was 18 during the sample review period, was (s)he a full time student in secondary school or its equivalent and expecting to graduate prior to the 19 th birthday? (State Option)			
B. RELEVANT DATES			
9. Date child was removed from home: (MM/DD/YY): _____			
10. Date court order removing child from home was initiated (i.e., date that petition was filed) (MM/DD/YY): _____			
C. REMOVAL PURSUANT TO A COURT ORDER			
11. Was child's removal the result of a judicial determination? If NO, go to Question #14. If YES, proceed to Question #12.			
12. Date of court order removing child from the home (MM/DD/YY): _____			
12 (a). CONTRARY TO THE WELFARE?			
13. Is there a court order that addresses REASONABLE EFFORTS TO PREVENT REMOVAL OR REASONABLE EFFORTS TO REUNIFY CHILD AND FAMILY ?			
13 (a). Date of court order re: reasonable efforts to prevent removal(MM/DD/YY): _____			
13 (b). Date of court order re: reasonable efforts to reunify (MM/DD/YY): _____			
D. VOLUNTARY PLACEMENTS			
14. Was the child's removal pursuant to a voluntary placement agreement? If NO, go to Question #17. If YES, proceed to Question #15.			
15. Was the voluntary placement agreement signed by parent/legal guardian AND the agency representative(s)?			
15(a). Date voluntary placement agreement was signed by all parties (MM/DD/YY): _____			
16. Is there a judicial determination regarding the child's BEST INTEREST within 180 days of the date of placement?			
16 (a). Date of judicial determination (MM/DD/YY): _____			
E. ONGOING JUDICIAL ACTIVITY			
17. Is there a judicial determination regarding REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN within 12 months of the date the child is considered to have entered foster care?			
17 (a). Date of judicial determination (MM/DD/YY): _____			
18. Is there a subsequent judicial determination regarding REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN at least once within each 12-month period following the initial determination?			
18 (a). Date(s) of subsequent judicial determination (MM/DD/YY): _____			
F. AFDC ELIGIBILITY			
19. Date child last lived with parent/specified relative prior to current foster care episode (MM/DD/YY): _____			
20. Was the child living with the specified relative at #19, above, within 6-months of the initiation of court proceedings or the voluntary placement agreement?			

	YES	NO	N/A
21. Was the child living with and removed from the same specified relative?			
22. Has the State determined that the child was AFDC-eligible at the time of removal?			
a. Was financial need established?			
b. Was deprivation of parental support or care established?			
23. Was the child's eligibility redetermined?			
a. Date of redetermination, if applicable (MM/DD/YY): _____			
24. Does financial need exist throughout the entire review period? If NO, indicate period of time during which child's financial need does not exist: FROM: (MM/DD/YY)_____ TO: (MM/DD/YY)_____			
25. Does deprivation exist throughout the entire review period? If NO, indicate period of time during which child is not deprived of parental support or care: FROM: (MM/DD/YY)_____ TO: (MM/DD/YY)_____			
G. STATE AGENCY RESPONSIBILITY FOR PLACEMENT/CARE OF CHILD			
26. For the entire time that the child is in an out-of-home placement during the review period, does the IV-E agency (or public agency with IV-E agreement) maintain responsibility for the placement and care of the child? If YES, proceed to #28. If NO, proceed to #27.			
27. Record any portion of the review period in which the agency DOES NOT have responsibility for the placement and care of the child, and complete #28. _____			
28. Name of agency: _____			
H. PLACEMENT IN LICENSED HOME OR FACILITY (Complete for EVERY home/facility during the review period)			
X3. Provider Name: _____			
X4. Provider Street Address: _____			
X5. Provider City: _____ X6. Provider State: _____			
29. Date of child's placement in this foster care facility (MM/DD/YY): _____			
30. Date of child's departure from this facility, if applicable (MM/DD/YY): _____			
31. Type of foster care facility (check one): FFH () GH () Public Inst. () PNP/FP Inst. () Other ()			
32. Is this provider licensed or approved during the child's placement that falls within the period under review?			
32 (a). Licensed period from (MM/DD/YY) _____ to (MM/DD/YY) _____			
32 (b). If NO , indicate dates when facility IS NOT licensed/approved: (MM/DD/YY) _____			
I. SAFETY REQUIREMENTS OF PROVIDER (Complete for EVERY home/facility during the review period)			
33. Has this State opted out of the criminal records check requirement? (This requirement applies only to foster family homes and pre-adoptive homes.) If YES , proceed to #35. If NO , continue with #34.			
34. Was a criminal records check satisfactorily completed on the foster/adoptive parent(s)?			
35. If the State has opted out of the criminal records check requirement, does the licensing file contain documentation that safety considerations with respect to the caretaker(s) have been addressed?			
36. If the child is placed in a child care institution, does the licensing file contain documentation that safety considerations with respect to the staff/caretakers have been addressed?			
<u>ADDITIONAL NOTES/COMMENTS:</u>			